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PART IV

Acts of the Dominion Legislature assented to by the Governor General

GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 3rd September, 1948.

The following Acts of the Dominion Legislature received the assent of the Governor General on the 3rd September, 1948 and are hereby published for general information:—

Act No. XXXVII of 1948

An Act to provide for certain matters in connection with the taking of census.



WHEREAS it is expedient to provide for the taking of census in the Provinces and Acceding States of India or any part thereof whenever necessary or desirable and to provide for certain matters in connection with the taking of such census;

It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Census Act, 1948.

(2) It extends to all the Provinces of India and also to any Acceding State for which the Central Legislature has for the time being the power to make laws as respects census.

2. Interpretation.—In this Act, all references to the Provinces of India shall be construed as including reference to the Acceding States to which this Act for the time being extends, and in relation to any such Acceding State, all references to the Provincial Government shall be construed as references to the Government of that Acceding State.

3. Central Government to take census.—The Central Government may, by notification in the official Gazette, declare its intention of taking a census in the whole or any part of the territories to which this Act extends, whenever it may consider it necessary or desirable so to do, and thereupon the census shall be taken.

4. Appointment of census staff.—(1) The Central Government may appoint a Census Commissioner to supervise the taking of the census throughout the area in which the census is intended to be taken, and Superintendents of Census Operations to supervise the taking of the census within the several Provinces.

(2) The Provincial Government may appoint persons as census officers to take, or aid in or supervise the taking of the census, within any specified local area and such persons when so appointed, shall be bound to serve accordingly.

(3) A declaration in writing, signed by any authority authorised by the Provincial Government in this behalf that any person has been duly appointed a census officer for any local area, shall have effect as if such person were appointed under section 17 of this Act.

(4) The Provincial Government may delegate to such authority as it thinks fit the power of appointing census officers conferred by subsection (2).

5. Status of census authorities as public servants.—The Census Commissioner, all Superintendents of Census Operations and all census officers shall be deemed to be public servants within the meaning of the Indian Penal Code (XLV of 1860).

6. Discharge of duties of census-officers in certain cases.—(1) Where the District Magistrate, or such authority as the Provincial Government may appoint in this behalf, by a written order so directs—

(a) every officer commanding any body of men belonging to the naval, military or air forces or of any service of war, of India,

(b) every person (except a pilot or harbour master) having charge or control of a vessel;

(c) every person in charge of a lunatic asylum, hospital, workhouse, reformatory or lock up or of any public, charitable, religious or educational institution;

(d) every keeper, secretary or manager of any station, hotel, boarding-house, lodging house, emigration depot or club;

(e) every manager or officer of a railway or any commercial or industrial establishment, and

(f) every occupant of immovable property wherein at the time of the taking of the census persons are living shall perform such of the duties of a census officer in relation to the persons who at the time of the taking of the census are under his command or charge, or are inmates of his house, or are present on or in such immovable property or are employed under him as may be specified in the order.

(2) All the provisions of this Act relating to census officers shall apply, so far as may be to all persons while performing such duties under this section, and any person refusing or neglecting to perform any duty which under this section he is directed to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code (XLV of 1860).

7. Power to call upon certain persons to give assistance.—The District Magistrate, or such authority as the Provincial Government in this behalf for any local area may, by written order which shall have effect throughout the extent of his district or of such local area as the case may be, call upon—

(a) all owners and occupiers of land, tenure holders and farmers and assignees of land revenue or their agents;

(b) all members of the district, municipal panchayat and other local authorities and officers and servants of such authorities, and

(c) all officers and members of staff of any factory, firm or establishment,

to give such assistance as shall be specified in the order towards the taking of a census of the persons who are, at the time of the taking of the census, on the lands of such owners, occupiers, tenure holders, farmers and assignees, or in the premises of factories, firms and other establishments, or within

the areas for which such local authorities are established, as the case may be, and the persons to whom an order under this section is directed shall be bound to obey it and shall, while acting in pursuance of such order, be deemed to be public servants within the meaning of the Indian Penal Code (XLV of 1860).

8. Asking of questions and obligation to answer.—(1) A census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Provincial Government and published in the official Gazette, he may be directed to ask.

(2) Every person of whom any question is asked under sub-section (1) shall be legally bound to answer such question to the best of his knowledge or belief:

Provided that no person shall be bound to state the name of any female member of his household, and no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention.

9. Occupier to permit access and affixing of numbers.—Every person occupying any house, enclosure, vessel or other place shall allow census-officers such access thereto as they may require for the purposes of the census and as, having regard to the customs of the country, may be reasonable and shall allow them to paint on, or affix to, the place such letters, marks or numbers as may be necessary for the purposes of the census.

10. Occupier or manager to fill up schedule.—(1) Subject to such orders as the Provincial Government may issue in this behalf, a census-officer may, within the local area for which he is appointed, leave or cause to be left a schedule at any dwelling-house or with the manager or any officer of any commercial or industrial establishment, for the purpose of its being filled up by the occupier of such house or of any specified part thereof or by such manager or officer with such particulars as the Provincial Government may direct regarding the inmates of such house or part thereof, or the persons employed under such manager or officer, as the case may be, at the time of the taking of the census.

(2) When such schedule has been so left, the said occupier, manager or officer, as the case may be, shall fill it up or cause it to be filled up to the best of his knowledge or belief so far as regards the inmates of such house or part thereof or the persons employed under him, as the case may be, at the time aforesaid, and shall sign his name thereto and, when so required, shall deliver the schedule so filled up and signed to the census-officer or to such person as the census-officer may direct.

11. Penalties.—

(I) (a) any census-officer or any person lawfully required to give assistance towards the taking of a census who refuses or neglects to use reasonable diligence in performing any duty imposed upon him or in obeying any order issued to him in accordance with this Act or any rule made thereunder, or any person who hinders or obstructs another person in performing any such duty or in obeying any such order, or

(b) any census-officer who intentionally puts any offensive or improper question or knowingly makes any false return or, without the previous sanction of the Central Government or the Provincial Government, discloses any information which he has received by means of, or for the purposes of a census return, or

(c) any sorter, compiler or other member of the census staff who removes, secretes, damages or destroys any census document or deals with any census document in a manner likely to falsify or impair the tabulations of census results, or

(d) any person who intentionally gives a false answer to, or refuses to answer to the best of his knowledge or belief, any question asked of him by a census-officer which he is legally bound by section 8 to answer, or

(e) any person occupying any house, enclosure, vessel or other place who refuses to allow a census-officer such reasonable access thereto as he is required by section 9 to allow, or

(f) any person who, removes, obliterates, alters, or damages any letters, marks or numbers which have been painted or affixed for the purposes of the census, or

(g) any person who, having been required under section 10 to fill up a schedule, knowingly and without sufficient cause fails to comply with the provisions of that section, or makes any false return thereunder, or

(h) any person who trespasses into a census office, shall be punishable with fine which may extend to one thousand rupees and in case of a conviction under part (b) or (c) shall also be punishable with imprisonment which may extend to six months.

(2) Whoever abets any offence under sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

12. Sanction required for prosecutions.—No prosecution under this Act shall be instituted except with the previous sanction of the Provincial Government or of an authority authorised in this behalf by the Provincial Government.

13. Operation of other laws not barred.—Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act.

Provided that no such prosecution shall be instituted except with the previous sanction referred to in section 12.

14. Jurisdiction.—No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try, whether under this Act or under any other law, any act or omission which constitutes an offence under this Act.

15. Records of census not open to inspection nor admissible in evidence.—No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such, or any schedule delivered under section 10, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872 (I of 1872), no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding whatsoever or in any criminal proceeding other than a prosecution under this Act or any other law for any act or omission which constitutes an offence under this Act.

16. Temporary suspension of other laws as to mode of taking census in municipalities.—Notwithstanding anything in any enactment or rule with respect to the mode in which a census is to be taken in any municipality, the municipal authority, in consultation with the Superintendent of Census Operations or with such other authority as the Provincial Government may authorise in this behalf, shall, at the time appointed for the taking of any census cause the census of the municipality to be taken wholly or in part by any method authorised by or under this Act.

17. Grant of statistical abstracts.—The Census Commissioner or any Superintendent of Census Operations or such person as the Provincial Government may authorise in this behalf may, if he so thinks fit, at the request and cost (to be determined by him) of any local authority or person, cause abstracts to be prepared and supplied containing any such statistical information as can be derived from the census returns for the Provinces of India or the Province, as the case may be, being information which is not contained in any published report and which in his opinion it is reasonable for that authority or person to require.

18. Power to make rules.—(1) The Central Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules providing for the appointment of census-officers and of persons to perform any of the duties of census-officers or to give assistance towards the taking of a census, and for the general instructions to be issued to such officers and persons.

Act No. XXXVII of 1948

An Act to provide for the continuance of certain legal proceedings by or against the Secretary of State.

WHEREAS it is expedient to provide for the continuance of certain legal proceedings by or against the Secretary of State in respect of any right of India or any part of India which were pending immediately before the 15th day of August, 1947;

It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Continuance of Legal Proceedings Act, 1948.

(2) It extends to all the Provinces of India.

2. Interpretation.—In this Act, "the appointed day" means the 15th day of August, 1947.

3. Continuance of legal proceedings—Any legal proceedings which immediately before the appointed day,—

(a) were pending by or against the Secretary of State in any Court within the territories which as from the appointed day became the territories of India by virtue of sub-section (1) of section 2 of the Indian Independence Act, 1947 (10 and 11 Geo. 6, c. 30), and

(b) were in respect of any right of India or any part of India, shall—

(i) if the right in question was that of the Governor General in Council, be continued by or against the Dominion of India;

(ii) if the right in question was that of the former Province of Bengal or the Punjab, be continued by or against the Province of West Bengal or East Punjab, as the case may be; and

(iii) if the right in question was that of any Governor's Province other than Bengal, the Punjab, the North-West Frontier Province or Sind, be continued by or against that Province.

4. Exclusion of time in computing period of limitation.—In computing the period of limitation prescribed for any appeal or application to a Court in respect of any such proceedings as aforesaid, the period from the appointed day up to the 28th day of May, 1948 shall be excluded.

5. Repeal.—(1) The Continuance of Legal Proceedings Ordinance, 1948 (XII of 1948) is hereby repealed.

(2) Anything done or any action taken in exercise of any powers conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 28th day of May, 1948.

ACT NO. XXXIX OF 1948

(An Act further to amend the Indian Registration Act, 1908)

WHEREAS it is expedient to amend the Indian Registration Act, 1908 (XVI of 1908), for the purposes hereinafter appearing :

It is hereby enacted as follows :—

1. Short title.—This Act may be called the Indian Registration (Amendment) Act, 1948.

2. Amendment of section 17, Act XVI of 1908.—In sub-section (2) of section 17 of the Indian Registration Act, 1908 (hereinafter referred to as the said Act), after clause (x), the following clause shall be inserted, namely :—

“(xx) any order made under the Charitable Endowments Act, 1890 (VI of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property ; or ”.

3. Amendment of section 32, Act XVI of 1908.—In section 32 of the said Act, for the words and figures “section 31 and section 89”, the words and figures “sections 31, 88 and 89” shall be substituted.

4. Amendment of section 69, Act XVI of 1908.—In sub-section (1) of section 69 of the said Act, in clause (g) the following clause shall be inserted, namely :—

“(gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration ; ”.

5. Substitution of section 88, Act XVI of 1908.—For section 88 of the said Act, the following section shall be substituted, namely :—

“88. Registration of documents executed by Government officers or certain public functionaries.—(1) Notwithstanding anything contained in this Act, it shall not be necessary for—

- (a) any officer of Government, or
- (b) any Administrator General, Official Trustee or Official Assignee, or
- (c) the Sheriff, Receiver or Registrar of a High Court, or
- (d) the holder for the time being of such other public office as may be specified in a notification in the official Gazette issued in that behalf by the Provincial Government,

to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him or in his favour in his official capacity, or to sign as provided in section 58.

(2) Any instrument executed by or in favour of an officer of Government or any other person referred to in sub-section (1) may be presented for registration in such manner as may be prescribed by rules made under section 69.

(3) The registering officer to whom any instrument is presented for registration under this section may, if he thinks fit, refer to any Secretary to Government or to such officer of Government or other person referred to in sub-section (1) for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.”

Act No. XL of 1948

An Act to confer upon Courts temporary jurisdiction in certain matrimonial causes

WHEREAS it is expedient to confer upon Courts in the Provinces of India temporary jurisdiction in certain matrimonial causes;

It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Indian Matrimonial Causes (War Marriages) Act, 1948.

(2) It extends to all the Provinces of India.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “High Court” shall have the same meaning as in the Indian Divorce Act, 1869 (IV of 1869);

(b) “marriage” includes a purported marriage which was void *ab initio*, and “husband” and “wife” shall be construed accordingly;

(c) “war period” means the period commencing on the 3rd day of September, 1939, and ending on the 31st day of March, 1946.

3. Application of Act.—The marriages to which this Act applies are marriages solemnized during the war period, where the husband was, at the time of the marriage, domiciled outside India, and the wife was, immediately before the marriage, domiciled in India.

Provided that this Act shall not apply to any marriage if, since the solemnization thereof, the parties thereto have resided together in the country in which the husband was domiciled at the time of the residence.

Explanation.—For the purposes of the above proviso the whole of the United States of America, the whole of the United Kingdom and the whole of any British possession outside India shall each be treated as one country.

4. Temporary extension of jurisdiction of High Courts.—In the case of any marriage to which this Act applies, the High Court shall have jurisdiction in and in relation to any proceedings for divorce or for nullity of marriage as if both parties were at all material times domiciled in India; and subject to the provisions of this Act, the provisions of the Indian Divorce Act, 1869 (IV of 1869), shall apply, so far as may be, in relation to any such proceedings instituted under this Act as if they were proceedings instituted under that Act:

Provided that this section shall not apply in relation to any proceedings for divorce or for nullity of marriage unless—

(a) the petitioner and the respondent professes the Christian religion, and

(b) the proceedings for divorce or for nullity of marriage are commenced not later than three years from the commencement of this Act.

5. Saving.—Nothing in this Act shall be deemed to extend or alter the jurisdiction of the High Court in, or in relation to, any proceedings for divorce or for nullity of marriage, where at the commencement of those proceedings the parties are domiciled anywhere in India.

6. Certain decrees and orders to be recognised.—The validity of any decree or order made in the United Kingdom by virtue of the Matrimonial Causes (War Marriages) Act, 1944 (7 and 8 Geo. 6, c. 43) shall, by virtue of this Act, be recognised in all Courts in the Provinces of India.

7. Power to make rules.—The High Court may make such rules as may be necessary for the purpose of carrying out the objects of this Act.

Act No. XLI of 1948

An Act to provide for the administration of oaths by diplomatic and consular officers and to prescribe the fees leviable in respect of certain of their official duties.

WHEREAS it is expedient to provide for the administration of oaths by diplomatic and consular officers and for the levy of fees in respect of certain official duties performed by them;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948.

2. Definitions.—In this Act,—

(a) “consular officer” includes consul-general, consul, vice-consul, consular agent, pro-consul and any other person authorised to perform the duties of consul-general, consul, vice-consul or consular agent;

(b) “diplomatic officer” means any ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation; and

(c) “prescribed” means prescribed by rules made under this Act.

3. Powers as to oaths and notarial acts abroad.—(1) Every diplomatic or consular officer may, in any foreign country or place where he is exercising his functions, administer any oath and take any affidavit and also do any notarial act which any notary public may do within the provinces of India; and every oath, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in any Province of India.

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

4. Punishment for offences under this Act.—(1) Whoever swears falsely in any oath or affidavit taken or made in accordance with the provisions of this Act shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever forges or fraudulently alters the seal or signature of any person authorised by or under this Act to administer an oath or tenders in evidence, or otherwise uses, any affidavit having any seal or signature so forged or counterfeited or fraudulently altered knowing the same to be forged, counterfeited or fraudulently altered, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

5. Trial of offences.—Any offence under this Act may be inquired into, dealt with, tried and punished in any Province of India in which the person charged with the offence was apprehended or is in custody, in the same manner and to the same extent as if the offence had been committed within the Province where he was apprehended or is in custody.

6. Power to prescribe fees.—(1) The Central Government may, from time to time, prescribe the fees to be levied in respect of any matter or thing done by a diplomatic or consular officer in the execution of his office.

(2) All such fees shall be levied, accounted for and applied and may be remitted in such manner as may be prescribed.

(9) A diplomatic or consular officer shall not, save as may be provided by any rules made in this behalf, ask for or take any fee or reward for or on account of any act or thing, or service done, performed or rendered by him in the execution of his office.

7. Publication and issue of tables of fees.—(1) Tables of the fees which may, for the time being, be levied under the rules shall be published in such manner and copies thereof shall be issued gratuitously to such persons as may be prescribed.

(2) Every consular officer, and every diplomatic officer in any foreign country or place where there is no consular officer, shall keep exhibited in a conspicuous place in his office a copy of the table of fees to be levied under this Act and shall permit the same to be inspected by any person interested therein.

8. Power to make rules.—(1) The Central Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the scale of fees leviable under this Act and the manner in which such fees shall be levied and collected;

(b) the remuneration, if any, payable to a diplomatic or consular officer in the execution of any of the duties vested in him by this Act;

(c) the registers to be kept and the returns to be made in pursuance of this Act; and

(d) the manner in which copies of tables of fees may be published and distributed.

ACT NO. XLII OF 1948

An Act further to amend the Indian Merchant Shipping Act, 1923

WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1923 (XXI of 1923) for the purpose hereinafter appearing;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Indian Merchant Shipping (Amendment) Act, 1948.

2. Amendment of section 206, Act XXI of 1923.—In clause (b) of sub-section (IA) of section 206 of the Indian Merchant Shipping Act, 1923 (XXI of 1923), for the words "five years" the words "three years" shall be substituted.

ACT NO. XLIII OF 1948

An Act further to amend the Indian Army Act, 1911

WHEREAS it is expedient further to amend the Indian Army Act, 1911 (VIII of 1911), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Indian Army (Amendment) Act, 1948.

2. Substitution of section 6A, Act VIII of 1911.—For section 6A of the Indian Army Act, 1911 (hereinafter referred to as the said Act), the following

section shall be substituted, namely:—

"6A. Relations between forces of Acceding States and Indian Land Forces when acting together.—When any of the forces of an Acceding State are acting with, or are attached to, any body of His Majesty's Indian Land Forces, whether within or outside the State, then—

(a) all the provisions of this Act shall apply to such forces and the members thereof as if they formed part of that body of His Majesty's Indian Land Forces;

(b) for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, any officer, sub-commissioned officer, warrant officer or non-commissioned officer of such forces shall, in relation to that body of His Majesty's Indian Land Forces, have all such powers and be treated as if he were an Indian commissioned officer, Viceroy's commissioned officer, warrant officer or non-commissioned officer, as the case may be, of His Majesty's Indian Land Forces; and

(c) the relative rank of officers, sub-commissioned officers, warrant officers and non-commissioned officers of such forces and of His Majesty's Indian Land Forces shall be such as may be determined by the Central Government or by such other authority as may be prescribed."

3. Omission of section 6B, Act VIII of 1911.—Section 6B of the said Act shall be omitted.

4. Amendment of section 7, Act VIII of 1911.—(1) In clause (2) of section 7 of the said Act, after the word "means", the words "a person of Indian nationality holding His Majesty's commission in His Majesty's Land Forces or" shall be inserted.

(2) The amendment made by sub-section (1) of this section shall be deemed to have been made with effect from the 15th day of August, 1947.

5. Repeal.—The Indian Army (Amendment) Ordinance, 1948 (XIX of 1948) is hereby repealed.

ACT NO. XLIV OF 1948

An Act further to amend the Durgah Khawaja Saheb Act, 1936

WHEREAS it is expedient further to amend the Durgah Khawaja Saheb Act, 1936 (XXIII of 1936), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Durgah Khawaja Saheb (Amendment) Act, 1948.

2. Amendment of section 5, Act XXIII of 1936.—In section 5 of the Durgah Khawaja Saheb Act, 1936 (XXIII of 1936),—

(a) in clause (e) of sub-section (1),—

(i) for the word "eleven" the word "nine" shall be substituted;

(ii) after item (vi) the word "and" shall be inserted; and

(iii) items (viii) and (ix) shall be omitted;

(b) for clause (f) of sub-section (1), the following clause shall be substituted, namely:—

"(f) three, co-opted by the members of the Committee referred to in clauses (a) to (e) from among persons residing in any of the Acceding States or in the State of Hyderabad; and";

(c) in clause (g) of sub-section (1), for the words, brackets and letters "in clauses (a) to (f)" the words, brackets and letters "in clauses (a) to (e)" shall be substituted;

(d) in sub-section (2), the brackets, letters and words "(a) he cannot read and write Urdu; or (b)" shall be omitted; and

(e) in sub-section (4), for the words "fails to do so within six months" the words "is for any reason unable to do so" shall be substituted.

3. Repeal of Ordinance X of 1948.—The Durgah Khawaja Saheb (Amendment) Ordinance, 1948 (X of 1948) is hereby repealed.

Act No. XLV of 1948

An Act to amend the Indian Telegraph Act, 1885

WHEREAS it is expedient to amend the Indian Telegraph Act, 1885 (XIII of 1885) for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Indian Telegraph (Amendment) Act, 1948.

2. Amendment of section 1, Act XIII of 1885.—For sub-section (2) of section 1 of the Indian Telegraph Act, 1885 (XIII of 1885) (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely:—

"(2) It extends to the whole of India."

3. Amendment of sections 4 and 20, Act XIII of 1885.—In sections 4 and 20 of the said Act, for the words "the Provinces" wherever they occur, the word "India" shall be substituted.

4. Insertion of new section in Act XIII of 1885.—After section 34 of the said Act, the following section shall be inserted, namely:—

"35. 'Provincial Government' to include Government of an Acceding State.—In the application of this Act to any Acceding State,—

(a) all references to a Provincial Government shall be construed as references to the Government of that Acceding State; and

(b) references to the Code of Criminal Procedure, 1898, in section 20 and to the Indian Penal Code in section 31 shall be construed as references to the corresponding law for the time being in force in that Acceding State."

Act No. XLVI of 1948

An Act to make provision for the framing of a Provident Fund Scheme and a Bonus Scheme for persons employed in coal mines.

WHEREAS it is expedient to make provision for the framing of a Provident Fund Scheme and a Bonus Scheme for persons employed in coal mines;

It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Coal Mines Provident Fund and Bonus Schemes Act, 1948.

(2) It extends to all the Provinces of India and to all Acceding States which, by their Instruments of Accession, have accepted the subject-matter of this Act as a matter with respect to which the Dominion Legislature may make laws for such States.

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “bonus” means any sum of money payable to an employee in a coal mine under the Coal Mines Bonus Scheme framed under this Act;

(b) “coal mine” means any excavation where any operation for the purpose of obtaining coal has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a coal mine:

Provided that it shall not include any part of the coal mine on which a manufacturing process is being carried on unless such process is a process for coke-making or the dressing of minerals;

(c) “contribution” means the contribution payable in respect of a member under the Coal Mines Provident Fund Scheme framed under this Act;

(d) “employee” means any person who is employed in any kind of work, manual or otherwise, in or in connection with a coal mine and who gets his wages directly or indirectly from the employer;

(e) “employer” means the owner of a coal mine as defined in clause (g) of section 3 of the Indian Mines Act, 1923 (IV of 1923);

(f) “Fund” means the provident fund established under the Coal Mines Provident Fund Scheme; and

(g) “member” means a member of the Fund.

3. Coal Mines Provident Fund Scheme.—(1) The Central Government may, by notification in the official Gazette, frame a scheme to be called the Coal Mines Provident Fund Scheme for the establishment of a provident fund for employees in coal mines and specify the coal mines to which the said scheme shall apply.

(2) Any scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the First Schedule.

4. Fund to be recognised under Act XI of 1922.—For the purposes of the Indian Income-tax Act, 1922 (XI of 1922), the Fund shall be deemed to be a recognised provident fund within the meaning of Chapter IX-A of that Act.

5. Coal Mines Bonus Scheme.—(1) The Central Government may, by notification in the official Gazette, frame a scheme to be called the Coal Mines Bonus Scheme for the payment of bonus to employees in coal mines and specify the coal mines to which the said scheme shall apply.

(2) A scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the Second Schedule.

6. Retrospective operation of a scheme.—A scheme framed under this Act may provide that any of its provisions shall come into force either prospectively or retrospectively with effect from such date as may be specified in this behalf in the scheme.

7. Modification of a scheme.—The Central Government may, by notification in the official Gazette, add to, amend or vary a scheme framed under this Act.

8. Protection against attachment.—(1) The amount of the provident fund standing to the credit of any member in the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member and neither the Official Assignee nor any Receiver appointed under the Provincial Insolvency Act, 1920 (V of 1920), shall be entitled to, or have any claim on, any such amount.

(2) Any amount standing to the credit of any member in the Fund at the time of his death and payable to his nominee under the Coal Mines Provident Fund Scheme shall, subject to any deduction authorised by the said scheme, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or incurred by the nominee before the death of the member.

9. Penalty.—(1) Any scheme framed under this Act may provide that any person who contravenes any of the provisions thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) No Court shall take cognizance of any offence punishable under any such scheme except on a report in writing of the facts constituting such offence made by an Inspector with the previous sanction of such authority as may be specified in this behalf by the Central Government.

10. Inspectors.—(1) The Central Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of the Coal Mines Provident Fund Scheme or the Coal Mines Bonus Scheme and may define their jurisdiction.

(2) An Inspector may, in respect of any coal mine within his jurisdiction,—

(a) require an employer to furnish such information as he may consider necessary for the purposes of any scheme framed under this Act;

(b) at any reasonable time, enter any coal mine or its office and require any one found in charge thereof to produce before him such accounts, books, registers and other documents relating to the employment of persons in the coal mine as he may consider necessary;

(c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the coal mine or its office or whom the Inspector has reasonable cause to believe to be or to have been an employee in the coal mine.

(d) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (XLV of 1860).

11. Priority of payment of contributions and bonus over other debts.—The amount due in respect of any contribution or bonus under a scheme framed under this Act, or any charges incurred in respect of the administration of any such scheme, shall, where the liability therefor has accrued before the person liable has been adjudicated insolvent or, in the case of a company ordered to be wound up, before the date of such order, be deemed to be included among the debts which, under section 49 of the Presidency-towns Insolvency Act, 1909 (III of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (V of 1920), or under section 230 of the Indian Companies Act, 1913 (VII of 1913), are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of a company being wound up, as the case may be.

12. Repeal of Ordinance VII of 1948.—(1) The Coal Mines Provident Fund and Bonus Schemes Ordinance, 1948 (VII of 1948), is hereby repealed.

(2) Notwithstanding any such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act had commenced on the 23rd day of April, 1948.

THE FIRST SCHEDULE

(See section 8)

Matters to be provided for in the Coal Mines Provident Fund Scheme.

1. The employees or class of employees who shall join the Fund, the contributions payable to the Fund and the conditions under which an employee may be exempted from joining the Fund or from payment of contributions.
2. The payment of contributions to the Fund by the employees, or by the employers on behalf of the employee, the rate, time and manner of payment of such contributions, and the manner in which such contributions or part thereof shall be recovered from employees.
3. The payment by the employer of such sums of money as may be considered necessary to meet the cost of administering the Fund and the rate at which and the manner in which it shall be paid.
4. The constitution of a Board of Trustees consisting of nominees of the Central Government and representatives of employers and employees nominated by the Central Government in consultation with the representative organisations concerned, subject to the condition that the number of the representatives of the employees shall not be less than the number of the representatives of the employers; the number of Trustees and the terms and conditions under which they may be nominated, and the time, place and procedure of meetings of the Board.
5. The appointment of officers and servants of the Board and the opening of regional and other offices.
6. The manner in which accounts shall be kept, the investment of moneys belonging to the Fund, the preparation of a budget, the audit of accounts and the submission of reports to the Central Government.
7. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.
8. The fixation of the rate of interest payable to members by the Central Government in consultation with the Board of Trustees.
9. The form in which an employee shall furnish particulars about himself and his family when required.
10. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or the change of such nomination.
11. The registers and records to be maintained by the employer and the returns to be furnished by him.
12. The form or design of an identity card or a token or a disc for purposes of identifying any employee and for the issue, custody and replacement thereof.
13. The fees to be levied for any of the purposes specified in this Schedule.
14. Any other matter which may be necessary or proper for the purpose of implementing the Coal Mines Provident Fund Scheme.

THE SECOND SCHEDULE

(See section 5)

Matters to be provided for in the Coal Mines Bonus Scheme.

1. The payment of bonus dependent on the attendance of an employee in a coal mine during any period.
2. The employees or class of employees who shall be eligible for the bonus and the conditions of eligibility.
3. The rate at which the bonus shall be payable to an employee and the manner in which the bonus shall be calculated.
4. The conditions under which an employee may be debarred from getting the bonus in whole or in part.
5. The rate at which sums shall be set apart by the employer for payment of bonus, and the time and manner of such payment.
6. The registers and records to be maintained by the employer and the returns to be furnished by him.
7. Any other matter which may be necessary or proper for the purpose of implementing the Coal Mines Bonus Scheme.

K. Y. BHANDARKAR,

Secretary to the Government of India.

